Geneva B. Scruggs Community Healthcare Center, Inc. *and* CSEA, Inc., Local 1000, AFSCME, AFL–CIO, CSEA Local 713. Case 3–CA–22591

February 15, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDLAE AND MEMBERS HURTGEN AND WALSH

Upon a charge filed by the Union on June 29, 2000, and an amended charge filed on July 17, 2000, the General Counsel of the National Labor Relations Board issued a complaint on September 29, 2000, against Geneva B. Scruggs Community Healthcare Center, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On December 22, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On December 27, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Union filed a letter in support of the motion. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 4, 2000, notified the Respondent that unless an answer were received by December 7, 2000, a Motion for Summary Judgment would be filed. Thereafter, the Respondent was given an extension of time until December 15, 2000, to file an answer and it did not do so.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a not-for-profit corporation, with an office and place of business in Buffalo, New York, has been engaged in the operation of a community health center. During the course of its normal business operations the Respondent annually derives gross revenues in excess of $1 million and, annually, purchases and receives, at its Buffalo facility goods and services valued in excess of $50,000 directly from points located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Elaine Blyden has held the position of president of the Respondent's board of directors, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act, and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent, herein called the unit, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part-time employees in the following classifications: Client Care Technician I (CCT 1), supply clerk, file clerk, certified occupational therapy aides (COTA), physical therapist assistant/rehabilitation technician, housekeeper, maintenance assistant, diet technicians, cooks, food service workers, medical assistants, dental assistants, switchboard operator, program specialist, health assistants, outreach educator, general billing clerk, van driver, accounts clerk, patient support services clerk, licensed practical nurses (LPNs), X-ray technicians and cashier, developmental aide, developmental aide 1; excluding all employees in "Voting Group A," managerial employees, supervisory employees, relief personnel, senior cook, guards as defined in the National Labor Relations Act, and all other employees.

[1] In the complaint, the General Counsel seeks an order requiring the Respondent to preserve and, on request, provide at the office designated by the Board or its agents, copies of specified records necessary to analyze the amounts due under the terms of the Board's Order, including electronic copies, if such records are stored in electronic form. The Order makes clear that electronic documents, if they exist, must be supplied. See *Bryant & Stratton Business Institute*, 327 NLRB 1135 fn. 3 (1999). With respect to the General Counsel's proposed requirement that the Respondent submit copies of the necessary records at the office designated by the Board or its agents, the Board has invited and received supplemental briefing on this issue in *Ferguson Electric Co. Inc.*, Case 34–CA–7875, which is pending before the Board. We find no reason, however, to hold the instant case in abeyance or to defer consideration of the General Counsel's Motion for Summary Judgment until the issuance of the Board's decision in *Ferguson*. Accordingly, we will adhere to the Board's standard order language in the present case.

Since about 1986, and at all material times, the Union has been designated exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from January 1, 1999 to December 31, 2002. At all times since 1986, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since in or about March 2000, the Respondent has failed and refused to remit to the Union, as required by the current collective-bargaining agreement, dues moneys withheld by the Respondent from unit employees' wages.

Since on or about May 6, 2000, the Respondent has failed and refused to pay accrued vacation pay and pay in lieu of accrued personal leave to unit employees upon separation from the Respondent's employment, as required by the current collective-bargaining agreement.

Since on or about June 20, 2000, the Union has requested that the Respondent furnish it with "an accounting of the outstanding wages, vacation leave accruals, personal leave accruals, holiday leave accruals, insurance premiums, membership dues and agency shop fees due and owed under the collective-bargaining agreement for each bargaining unit member who was on the payroll as of May 5, 2000." The Union also requested that the Respondent provide the specific payment plan the Respondent intended to use in meeting its obligations. This information is necessary for and relevant to the Union's performance of its duties as the exclusive bargaining representative of the unit.

Since about June 20, 2000, the Respondent has failed and refused to furnish the Union with the information described above.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to remit dues monies withheld from unit employees' wages, to pay accrued vacation pay and pay in lieu of accrued personal leave to employees upon their separation from the Respondent's employment and to provide requested information that is relevant and necessary to the Union's role as the exclusive collective-bargaining representative of the unit, we shall order the Respondent to remit to the Union the dues deducted from employees' wages, to pay the contractually required vacation pay and pay in lieu of accrued personal leave upon separation from employment, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and to furnish the requested information to the Union.

ORDER

The National Labor Relations Board orders that the Respondent, Geneva B. Scruggs Community Health Care Center, Inc., Buffalo, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to remit to the Union dues withheld from unit employees' wages.

(b) Failing and refusing to pay contractually required vacation pay and pay in lieu of accrued personal leave to unit employees upon their separation from the Respondent's employment.

(c) Failing and refusing to provide necessary and relevant information to the Union upon request.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act as set forth in the Remedy:

(a) Remit to the Union the dues moneys withheld from employees' wages, as required by the collective-bargaining agreement, with interest computed in the manner set forth in the remedy section.

(b) Pay contractually required accrued vacation pay and pay in lieu of accrued personal leave to unit employees upon their separation from the Respondent's employment, with interest computed in the manner set forth in the remedy section.

(c) Provide the Union the information it requested by letter dated June 20, 2000.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Buffalo, New York, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 3,

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 2000.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 15, 2001

John C. Truesdale, Chairman

Peter J. Hurtgen, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to remit to the Union dues withheld from the wages of our employees in the following appropriate unit:

> All full time and regular part-time employees in the following classifications: Client Care Technician I (CCT 1), supply clerk, file clerk, certified occupational therapy aides (COTA), physical therapist assistant/rehabilitation technician, housekeeper, maintenance assistant, diet technicians, cooks, food service workers, medical assistants, dental assistants, switchboard operator, program specialist, health assistants, outreach educator, general billing clerk, van driver, accounts clerk, patient support services clerk, licensed practical nurses (LPNs), X-ray technicians and cashier, developmental aide, developmental aide 1; excluding all employees in "Voting Group A," managerial employees, supervisory employees, relief personnel, senior cook, guards as defined in the National Labor Relations Act, and all other employees.

WE WILL NOT fail and refuse to pay contractually required vacation pay and pay in lieu of accrued personal leave to unit employees upon their separation from our employment.

WE WILL NOT fail and refuse to provide necessary and relevant information to the Union upon request.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union dues withheld from our unit employees' wages with interest.

WE WILL pay contractually required vacation pay and pay in lieu of accrued personal leave to unit employees upon their separation from our employment with interest.

WE WILL provide the information to the Union it requested in its letter dated June 20, 2000.

GENEVA B. SCRUGGS COMMUNITY HEALTH CARE CENTER, INC.